

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KURT VON STADEN,

Petitioner,

v.

MICHAEL S. EVANS, Warden,

Respondent.

No. C 09-3788 MMC (PR)

**ORDER CONSOLIDATING ACTION  
WITH C 09-3789 MMC**

In April 2004, the Marin County District Attorney filed three separate informations against petitioner, Case Nos. SC122889A, SC124442A, and SC126580A, which cases were consolidated for trial. In November 2004, a Marin County jury found petitioner guilty of two counts of possession of methamphetamine (Cal. Health & Safety Code § 11377(a)), and one count of possession of a concealed dirk or dagger (Cal. Pen. Code § 12020(a)). Thereafter, in Case No. SC 136369B, a separate Marin County case also tried to a jury in 2004, petitioner was found guilty of burglary (Cal. Pen. Code § 459), and grand theft (Cal. Pen. Code § 487(a)). Additionally, the jury in one of said trials and the trial court in the other found petitioner had sustained multiple prior felony convictions (Cal. Pen. Code §§ 1203, 1170.12) and had committed offenses while released on bail (Cal. Pen. Code § 12022.1).

1 In a single sentencing proceeding, petitioner was sentenced to an aggregate term of 39  
2 years and 8 months to life in state prison. The California Court of Appeal consolidated the  
3 cases and affirmed the judgment, and the California Supreme Court denied review.

4 On August 18, 2009, petitioner filed the instant petition for a writ of habeas corpus,  
5 C 09-3788 MMC, challenging his conviction in Case Nos. SC122889A, SC124442A, and  
6 SC126580A. Also on August 18, 2009, petitioner filed a separate petition for a writ of  
7 habeas corpus, C 09-3789 MMC, challenging his conviction in Case No. SC 136369B. Both  
8 actions were stayed to afford petitioner an opportunity to exhaust his state court remedies.

9 On April 6, 2012, the Court re-opened the instant action (C 09-3788 MMC), and  
10 ordered respondent to show cause why the petition should not be granted. Respondent has  
11 filed an answer. Petitioner has not filed a traverse, and the time in which to do so has passed.

12 On April 16, 2013, the Court re-opened the instant action, C 09-3789 MMC, and  
13 ordered respondent to show cause why the petition should not be granted. Respondent's  
14 answer is due on or before January 13, 2014.

15 In his two petitions, petitioner raises at least two claims of error that are common to  
16 both convictions. Specifically, in each petition, petitioner argues that: (1) there was  
17 insufficient evidence to support a finding that petitioner's 1986 conviction for gross vehicular  
18 manslaughter was a serious felony conviction for purposes of California's Three Strikes Law;  
19 and (2) petitioner was denied a meaningful opportunity to contest factual issues relating to  
20 said prior conviction. Because the petitions raise common claims, the Court, in the interests  
21 of justice and efficiency, will consolidate the instant petition with the above-referenced later-  
22 filed petition.

23 Based on the foregoing,

24 The Clerk of Court is hereby DIRECTED to CLOSE the above-titled action and  
25 CONSOLIDATE the instant petition with the petition filed in C 09-3789 MMC, the later-  
26 filed action.

27 The scheduling order in C 09-3789 MMC, set by the Court's order of October 29,  
28 2013, remains in effect. The Court will rule on both petitions in a single order filed in C 09-

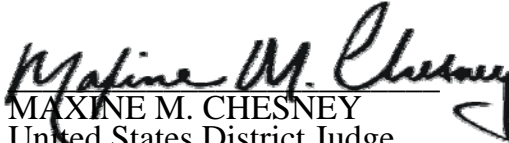
1 3789 MMC, after briefing has been completed in C 09-3789 MMC.

2 The Clerk of Court is further DIRECTED to file a copy of this Order in both C 09-  
3 3788 MMC and C 09-3789 MMC, and to send a copy of this Order to the State Attorney  
4 General listed as respondent's counsel in C 09-3789 MMC; in addition, the Clerk shall send a  
5 copy of this Order to petitioner.

6 Thereafter, all future filings shall be only in C 09-3789 MMC.

7 IT IS SO ORDERED.

8 DATED: November 15, 2013

9   
10 MAXINE M. CHESNEY  
United States District Judge